IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7511 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUSTAK ISABHAI JUNEJA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7511 of 2002

MR AR SHAIKH for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/02/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has

challenged his detention order dated 12.6.2002. By the impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "dangerous person" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of two criminal cases, which are registered against the petitioner. It is alleged against the petitioner that, because of his high-handed activities, as, he is moving with dangerous weapons like sword etc. he is disturbing the peace and, therefore, the authority, having been subjectively satisfied that the activities of the petitioner are required to be curbed by way of preventive detention, passed the order detaining the petitioner under the preventive detention. The said detention order is challenged by the petitioner by way of this petition.

#. At the time of hearing of this petition, the learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner. It is submitted that the representation was made on behalf of the petitioner through his lawyer by way of Registered Post A.D. on 24.7.2002, which was received by the authority on 7.8.2002 and, the said representation, ultimately, was decided on 13.8.2002. In that view of the matter, it is submitted that, there is a delay between 7.8.2002 and 13.8.2002 in deciding the representation. The learned advocate for the petitioner also placed on record the communication received by the petitioner from the Section Officer, Home Department dated 14.8.2002, in which, it is mentioned that the representation of the petitioner is rejected on 13.8.2002. The State Government has filed the reply wherein the delay is tried to be explained in para 20, which reads as follows.:

"With reference to para 5(19) of the petition, I say that the representation was properly considered and rejected by the State Government on 13.8.2002 and the State Government has instructed my office to supply copies of available documents as per the demand made in the said representation. The said letter was received by me on 19.8.2002 and on the very next

day, the detenu was supplied with copies of available relevant documents as per the demand made therein in the said representation, through the jail authorities. Therefore the contention raised by the detenu in this para is not tenable at law."

#. It is pointed out that the said representation was received by the department on 7.8.2002. However, in my view, the delay in deciding the representation between 7.8.2002 and 13.8.02002 is not properly explained. Once the Home Department itself has received the representation on 7.8.2002, it was not necessary to entertain further correspondence by way of intra-department correspondence. The authority, therefore, has not properly explained the delay as to why the representation which is received on 7.8.2002 is not promptly decided when the Home Department has received the same on 7.8.2002 as it was required to be decided forthwith.

#. In view of what is stated above, the petition is allowed. The order of detention dated 12.6.2002 is quashed and set aside. The detenu Mustak Isabhai Juneja is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)